

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

DAVID COLUNGA MARTINEZ	§	
	§	CASE NO.: 22-cv-9
VS.	§	
	§	
ENILDO GONZALEZ CALZADILLA	§	
AND SHORY EXPRESS LLC	§	JURY TRIAL DEMANDED

**NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, ENILDO GONZALEZ CAZADILLA, files this Notice of Removal to the United States District Court for the Southern District of Texas, McAllen Division, on the basis of diversity jurisdiction and would respectfully show the Court as follows:

**I.**

**Background and Procedural History**

1. This is a lawsuit involving a car wreck. In the underlying lawsuit, filed under Cause No. C-3506-21-F; *David Colunga Martinez v. Enildo Gonzalez Calzadilla and Shory Express LLC*; in the 332<sup>nd</sup> Judicial District Court of Hidalgo County, Texas (the “Underlying Lawsuit”). In the Underlying Lawsuit, Plaintiff seeks relief of over \$1,000,000.

2. The Texas Secretary of State was served with process for Defendant CAZADILLA on December 7, 2021. The notice was forwarded by Certified Mail on December 16, 2021. Defendant files this Notice of Removal within the thirty-day period required under 28 U.S.C. § 1446(b).

## II. BASIS FOR REMOVAL

3. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a), and 1446.

### A. There is Complete Diversity of Citizenship.

4. Plaintiff MARTINEZ is a citizen of Texas.

5. Defendant CALZADILLA is an individual resident of Florida. As such, for diversity purposes, CALZADILLA is a citizen of Florida §1332(c)(1).

### B. The Amount in Controversy Exceeds the Jurisdictional Requirements

6. It is undisputed that the amount in controversy exceeds the \$75,000 jurisdictional requirement. For the purposes of determining the amount in controversy, unless the law provides otherwise, “the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *St. Paul Mercury Indem. Co. v. Red Cab. Co.*, 303 U.S. 283, 288 (1938); *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1410 (5th Cir. 1995). In his petition, Plaintiff asserts that he seeks damages in the amount of \$1,000,000 plus costs and interest.” Exhibit A, Third Amended Petition at page 3. Accordingly, the amount in controversy threshold is satisfied.

7. A defendant can carry its burden by showing that it is either facially apparent from a plaintiff’s petition that the plaintiff’s claims are likely to exceed \$75,000.00, or by presenting summary judgment-type evidence that the amount in controversy is likely to exceed the jurisdictional minimum. *Gebbia*, 233 F.3d at 881; *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998). Such “tests are applied in order, and only if the “facially apparent” test is not met, do we require “summary judgment” type evidence of the amount in controversy.” *Pollet v. Sears Roebuck & Co.*, 46 Fed. Appx. 226, \*2-3 (5th Cir. 2002).

8. Here, it is facially apparent that the amount in controversy in the instant case exceeds \$75,000. *See Gebbia*, 233 F.3d at 881. Plaintiff has alleged that he is seeking relief in excess of \$1,000,000. *See* Ex. A. By pleading damages in excess of \$1,000,000, Plaintiff acknowledges that he is seeking at least a sum of damages in a seven-figure range, clearly exceeding the \$75,000.00 threshold.

9. Defendant has produced ample evidence for the Court to find removal appropriate. Defendant has met its burden to prove by a preponderance of the evidence that Plaintiff's claims are likely to exceed \$75,000.00. Consequently, the Court can find that the amount in controversy requirement has been satisfied to have this case properly removed to this Court.

### **III. THE REMOVAL IS PROCEDURALLY CORRECT**

10. The Texas Secretary of State was served on December 7, 2021, and mailed a copy of the service to Defendant on December 16, 2021. Thus, Defendant files this Notice of Removal within the thirty-day period required by 28 U.S.C. § 1446(b).

11. Venue is proper in this district and division under 28 U.S.C. § 1446(a) because this District and Division includes the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

12. Pursuant to 28 U.S.C. § 1446(a), all executed processes, all pleadings, signed orders, a copy of the docket sheet, and an index will be filed contemporaneously with this Notice.

13. Pursuant to 28 U.S.C. § 1446(d), promptly after Defendant files this Notice, written notice of the filing will be given to the Plaintiff, the adverse party.

14. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of Bexar County District Court, promptly after Defendant files this Notice.

**IV.**

**CONCLUSION**

Based upon the foregoing, and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendant ENILDO GONZALEZ CAZADILLA hereby removes this case for trial and final determination.

Respectfully submitted,

BUSH & RAMIREZ, PLLC

BY: /s/George T. Jackson

George T. Jackson

SBN: 10466950

[Gjackson.atty@bushramirez.com](mailto:Gjackson.atty@bushramirez.com)

5615 Kirby Drive, Suite 900

Houston, TX 77005

(713) 626-1555 phone

(713) 622-8077 fax

Attorneys for Defendant,  
**ENILDO GONZALEZ CAZADILLA**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2022, a true and correct copy of this instrument was forwarded to all known counsel, using the Court's CM/ECF system, and via E mail and Fax in accordance with the Federal Rules of Civil Procedure and applicable Local Rules.

**Via e-service:**

[lsmiguel@reynalaw.com](mailto:lsmiguel@reynalaw.com)

[dolivarez@reynalaw.com](mailto:dolivarez@reynalaw.com)

[esmer@reynalaw.com](mailto:esmer@reynalaw.com)

Law Offices of Ezequiel Reyna, Jr.

Ezequiel Reyna, Jr.

702 W. Expressway 83, Suite 100

Weslaco, Texas 78796

/s/George T. Jackson

George T. Jackson